IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13834 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPROATION -THR'LEGAL ADVISOR - Petitioner(s)

Versus

AJITSINH UDESINH GADHVI C/O.RASIKLAL R.RANA - Respondent(s)

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Appearance :

MR ASHISH M DAGLI for Petitioner(s) : 1,
MR JS BRAHMBHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/08/2005

ORAL JUDGMENT

Rule. In this petition under Articles 226 and 227 of the Constitution of India the petitioner Corporation has challenged the legality and validity of the judgment and award passed by the Labour Court, Bharuch dated 24.2.2005 in Reference (LCB) No. 137 of

1995 in partly allowing the said Reference by quashing and setting aside the order of punishment imposed by the disciplinary authority in dismissing the respondent workman from service, however, without any backwages.

2. The respondent workman was working as Assistant Traffic Inspector and by administrative order dated 7.2.1984 the order of transfer was made at Jagadia Depot. Accordingly relieving order dated 19.5.1992 was issued and the respondent workman was informed to report for duty at Jagadia Depot. A departmental inquiry came to be initiated against him as the respondent workman did not obey the order of transfer and had chosen not to report for duty at Jagadia Depot and even remaining absent thereafter and did not report for duty though directed to report for duty and till 26.4.1994 remained absent unauthorisedly. After conclusion of the departmental enquiry and holding the charge proved against him, the disciplinary authority imposed the punishment of dismissing the respondent workman from services. Being aggrieved and dissatisfied with the order of punishment imposed by the disciplinary authority dated 26.12.1994 in dismissing the respondent workman from service, the respondent workman raised industrial dispute which was referred to the Labour Court, Bharuch being Reference (LCB) No. 137 of 1995, and the Labour Court considering the fact that the order of transfer was challenged by the respondent

workman and that the punishment imposed by the disciplinary authority dismissing him from service is too harsh and disproportionate to the charge and misconduct proved against him and considering the fact that before imposing the punishment of dismissal his past record was not considered by the disciplinary authority, exercising the power under Section 11-A of The Industrial Disputes Act, 1947 and partly allowed the said Reference by quashing and setting aside the order of punishment imposed by the disciplinary authority directing the petitioner to reinstate the respondent workman without backwages. Being aggrieved and dissatisfied with the judgment and award passed by the Labour Court, Bharuch, dated 24.2.2005 in Reference (LCB) No. 137/1995, the petitioner Corporation has preferred the present Special Civil Application under Articles 226/227 of the Constitution of India.

3. Shri Ashish Dagli, learned advocate has vehemently submitted that the Labour Court has found the departmental enquiry as legal and valid and therefore the Labour Court was not justified in interfering with the order or punishment imposed by the disciplinary authority. It is further submitted that when the charge and misconduct of not obeying the order of transfer and remaining absent unauthorisedly for a period of more than 2 ½ months came to be established and proved against him the Labour Court was not justified interfering with the

order of punishment imposed by the disciplinary authority exercising the power under Section 11-A of the I.D. Act. It is also further submitted by him that what has weighed with the Labour Court is that while imposing the punishment of dismissal the disciplinary authority had not considered his past conduct and that there was no earlier misconduct. However, he has submitted that in fact there were number of misconducts and defaults to the credit of the respondent workman including the misconduct of similar nature of remaining absent without prior permission and there are so many instances of remaining absent wherein punishments were imposed and on one occasion the respondent workman was dismissed from service and the said misconducts and defaults were mentioned in the Service Book which has not been considered by the Labour Court. He has submitted that for some reason or the other and/or considering the fact that there were entries posted in the Service Book the default-card was not produced. However the Ground No.E has not been controverted by the respondent workman and therefore it is requested to allow the present Special Civil Application.

4. Per contra, Shri J.S. Brahmbhatt, learned advocate appearing on behalf of the respondent workman has supported the judgment and award passed by the Labour Court. He has further submitted that when on appreciation of evidence the Labour Court has found that the punishment of dismissal imposed by the

disciplinary authority is too harsh and disproportionate to the charge and misconduct proved against the respondent workman and the same is quashed and set aside and the respondent workman is denied the backwages the same is not required to be interfered with by this Court exercising power under Article 226/227 of the Constitution of India even if the judgment and award passed by the Labour Court is erroneous unless it is found to be perverse. He has also further submitted that as the respondent workman had challenged the order of transfer before the Civil Court he did not report for duty and therefore there was a valid reason for the respondent workman not to report for duty and hence the Labour Court has rightly quashed and set aside the order of dismissal imposed by the disciplinary authority by directing the petitioner to reinstate the respondent workman. So far as the past misconduct and the defaults are concerned, it is submitted by him that as the default card was not produced before the Labour Court the same cannot be considered by this Court while exercising the powers under Section 226/227 of the Constitution of India and therefore it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that the respondent-workman came to be transferred to Jagadia Depot. It is true, that the respondent workman challenged the order of transfer before the Civil

Court, Bharuch being Regular Civil Suit No. 54/1994, however, there was no injunction and/or stay granted by the Civil Court. It is not in dispute that the petitioner was given an intimation on 2.3.1995 by way of R.P.A.D., as well as U.P.C., to report for duty at Jagadia Depot but he did not report for duty. Again, on 13th April 1994 intimation was given through R.P.A.D., and U.P.C., to report for duty, however the respondent workman did not report for duty on 26.4.1994 and had remained unauthorisedly absent. It is also required to be noted that the respondent workman was chargesheeted vide Chargesheet dated 3.6.1994 and the same was sent at the residential address of the respondent workman by R.P.A.D., as well as by U.P.C., and though the same was served upon the respondent workman on 4.6.1994 the respondent workman did not reply to the chargesheet. However, pursuant to the hearing which was kept on 18.7.1994 at Divisional Office, Bharuch the respondent remained present and submitted written submissions and intimated that he has challenged the order of transfer before the Civil Court, Bharuch and till admission and final disposal of the suit the hearing of the departmental enquiry be postponed. In view of the fact that there was no stay order the prayer of the respondent to postpone the departmental enquiry was refused and the hearing was kept on 26.7.1994 wherein the respondent-workman did not remain present. Considering the facts and circumstances, it cannot be said that there is no misconduct committed by the respondent-workman at

all. The Labour Court in its judgment and award while exercising powers under Section 11-A of the I.D. Act has observed that the disciplinary authority has not considered his past record and the misconduct and it appears that as per the Labour Court it was his first misconduct and/or there were no other misconducts/defaults in the past. However according to Shri Dagli, there were many defaults/misconducts on the part of the respondent workman of similar nature and even at one point of time he was dismissed from service. It is true, that the default card was not produced before the Labour Court but considering the aforesaid facts and circumstances the said benefit cannot be given to the respondent workman. It appears to the Court that, if the default card would have been produced before the Labour Court and the past misconducts and defaults would have been pointed out to the Labour Court, then the Labour Court might not have even interfered with the order of punishment imposed by the disciplinary authority and/or would have imposed some other harsh punishment. Under the circumstances, while quashing and setting aside the judgment and award passed by the Labour Court, the matter is required to be remanded to the Labour Court allowing the petitioner Corporation to produce the default card and adduce evidence with regard to his past misconduct and defaults and let the Labour Court reconsider the same afresh.

6. For the reasons stated hereinabove, the judgment and award passed by the Labour Court,

Bharuch dated 24.2.2005 in Reference (LCB) No. 137/1995 is hereby quashed and set aside and the matter is remanded to the Labour Court, Bharuch, for its fresh decision in accordance with law and on merits. It will be open for the petitioner to adduce fresh evidence, produce the default card and point out his past misconducts and the defaults and the same may be considered by the Labour Court in accordance with law and on merits. The Labour Court is directed to decide and dispose of the Reference, on remand, as early as possible preferably within 6 months from the date of receipt of this order. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R. Shah, J.]

RMR.